

Spongenberg



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Forest Service--Request for Reconsideration
File: B-226665.3
Date: February 5, 1988

DIGEST

General Accounting Office affirms previous decision recommending that item to be acquired in an option be the subject of competition, where the agency requesting reconsideration of the decision has not demonstrated any error of fact or law.

DECISION

The Forest Service, United States Department of Agriculture, requests that our Office reconsider the recommendation made in our decision in Husky Computer, Inc., B-226665.2, Nov. 4, 1987, 87-2 CPD ¶ 443.

We affirm our previous decision.

In our previous decision, we denied Husky's protest of the Forest Service award of a contract to Omnidata International, Inc., pursuant to request for proposals (RFP) No. RI-87-5 for 150 portable data recorders. We found no merit to Husky's protest that Omnidata's proposed data recorder model 602, on the basis of which the award selection was made, was unacceptable under the RFP.

Although we denied Husky's protest, our review showed that Omnidata's contract contained an option for the Forest Service to acquire an upgraded model of Omnidata's standard series data recorders (the model No. 654) that was to be custom designed during the contract to meet the Forest Service region's specific needs. We viewed the method the Forest Service utilized to acquire the customized model 654 as not in accordance with proper procurement procedures. Consequently, after denying Husky's protest, we said:

"We are concerned about the method by which the Forest Service is acquiring the Omnidata model 654 that has yet to be developed. In this regard, even though the recorder is to be provided for a

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fixed price as an option under the contract, the record clearly shows that there are no clear parameters for the Omnidata model 654, e.g., it is not yet known what the model 654 will look like. The RFP did not specifically invite developmental products and the proposed future enhancements are said to be no part of the award selection. Moreover, we are concerned that the statement in the request for BAFOs [best and final offers] that enhancements could be offered did not sufficiently alert the competitors that the Forest Service ultimately wanted a customized data recorder to fulfill its long term requirements. In this regard, in its comments on the protest, Oregon [Digital Products Inc.--a party which submitted a proposal on the RFP but did not protest the award] has stated that it would have submitted a different proposal on a solicitation for a customized data recorder to be developed. Under the circumstances . . . we recommend that before the option for the model 654 recorder is exercised, the development effort be the subject of a separate competition."

The Forest Service's reconsideration request is based on its allegation that Oregon did not have the willingness or capability to submit a proposal on a solicitation for a customized data recorder, notwithstanding Oregon's statement to our Office (referenced above) that it would have submitted a different proposal in such circumstances. The Forest Service contends that Oregon conceded, both prior to the issuance of the RFP and during the procurement process, that it would not submit a proposal for a customized data recorder. In this regard, the Forest Service states that the capability of Oregon to provide customized enhanced data recorders is entirely dependent on manufacturers of hand held computers, such as Hewlett-Packard, who Oregon said would not develop such customized hardware for this application, and that Oregon has no independent capability to develop such customized hardware as is evidenced by its proposal.

It is true that in our previous decision we referenced Oregon's statement that it would have proposed a different model if the solicitation had been for a customized data recorder. However, a complete reading of our decision shows that our recommendation was not merely based upon Oregon's statement, but on the fact that the Forest Service utilized this RFP, which basically called for an "off the shelf" data recorder, to procure a customized recorder to be developed under the contract, without sufficiently alerting the industry to this fundamental change in the requirements.

Other than disputing the Oregon statement referenced above, the Forest Service does not contest any other factual or legal statement in our decision.

Moreover, Oregon's proposal does not demonstrate an inability or unwillingness to supply a customized data recorder. In this regard, the Forest Service has not demonstrated that Oregon could not have offered a customized product, since the Forest Service concedes that Oregon could shop around for a hand-held computer manufacturer, other than Hewlett Packard, that may be willing to work with Oregon to customize a data recorder for the Forest Service's use.

The Forest Service also asserts that to now conduct a competition for a customized data recorder would result in a "technical transfusion" of Omnidata's approach into the marketplace, which would give Omnidata's competitors a competitive advantage. However, as indicated in our previous decision, the customized model 654 is not described in any way in the contract or Omnidata's proposal, and it is not certain what the Forest Service would be acquiring under the option if exercised. Therefore, we do not understand how Omnidata's technical approach would be disclosed to its competitive disadvantage.

Since the Forest Service has not demonstrated any error of fact or law, we affirm our previous decision.

A handwritten signature in black ink, reading "Milton J. Foster". The signature is written in a cursive, flowing style.

Acting Comptroller General
of the United States